

JLS

Quid Novi

VOL. VII NO.18

MCGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE MCGILL FACULTE DE DROITMarch 04, 1987
Le 04 mars 1987

Charter Keeps Court Busy

by Brigitte Catellier

When Mr. Justice Gérard LaForest became a judge of the Supreme Court of Canada in 1986, the Charter was already celebrating its fourth anniversary. Said LaForest, "what I'm surprised at is the number of cases that the Court lets in. There have been twenty-five cases decided by the Court; twenty-five more are now under review; and about the same number is coming up...Charter cases account for a large portion of our work. In theory, they represent about one quarter of our load, but they take much more time in practice."

In spite of his busy schedule, Mr. Justice LaForest drove to Montreal with his wife on Tuesday, February 17 and addressed a full house in the Moot Court. He chose to speak about the effects of the Charter on the Supreme Court of Canada. He began by stating that many people wonder what the flood of Charter cases is doing to change our society; then he asked, "but what is it doing to the Court?"

In summarizing the Court's approach to more recent cases, Mr. Justice LaForest indicated the importance of the American experience with the United

States' Bill of Rights, and suggested some problems associated with compressing fifty years of American jurisprudence into one brief time in our nation's history. Aside from U.S. cases, he said, the Court also sifts through International Law decisions. Mr. Justice LaForest pointed out, however, that the Court's reliance upon this case law does not blind them to the uniquely Canadian

task at hand that is theirs to achieve. He concluded his introductory remarks by conceding the difficulties which the Charter has created for the Supreme Court, but, said the judge, "So far I think we've made the right guesses."

At this point, Mr. Justice LaForest welcomed questions from the audience. On written applications for leaves to

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Moot Problem Problem

by Terry Pether

Every year there's some controversy surrounding the Mooting process. This year, second term problem number 7 has raised the ire of students in all years as well as those from first assigned to the case. The problem deals with sexual assault. It was written by Tom Schneider (B.C.L. II) and approved by Faculty advisor, Professor Sklar. Soon after the problem became distributed among students, the outcry began. Essentially, the accusation is that the characterizations of the players in Schneider's drama trivialize the crime of sexual assault.

A group of concerned students prepared a letter and petition

which was delivered to Dean Macdonald on February 18. That same day, a representative of the group attended the bi-weekly L.S.A. meeting to propose two resolutions be adopted by the L.S.A.: first, that Mooting problem number 7 be recognized as entirely inappropriate, and second, that the L.S.A. support the establishment of a joint student/faculty committee to examine the treatment of issues of violence against women and minorities in academic matters. Because a motion to postpone the vote on these resolutions failed, Tom Schneider was unable to attend to react to them. Professor Sklar was made aware of the issue and

Cont'd on p.6

ANNOUNCEMENTS

McGill Free Tax Clinic

For those of you who haven't heard, the McGill Accounting Club is holding its annual Tax Clinic during the month of March. All members of the McGill Community are invited to bring us their tax returns and we will process them absolutely free of charge. Documents should be brought to the Bronfman Building lobby from March 2nd to March 6th between 10:00 and 4:30.

The Clinic is being sponsored this year by the accounting firm of Price Waterhouse. All students working at the Clinic will attend a seminar given by Price Waterhouse, and representatives of both Price Waterhouse and Revenue Canada will be on hand at the Clinic itself to provide assistance.

We will only be able to process a limited number of forms so bring us your documents as soon as possible. We also reserve the right to refuse very complicated forms.

Doug Stansbury
McGill Tax Clinic Committee

Skit Nite '87

Rehearsals for the skits for Saturday Night Law will be taking place the week of March 2-6 in the Common Room. A sign-up sheet is posted in the L.S.A. office. If you have not yet contacted the Skits Committee about your masterpiece, you have until Friday, March 6 to display it in all its splendor.

MBA/LAW INFORMATION MEETING

On Wednesday, March 4 - 12:00 NOON Prof. Buckley will be holding an information session on how to apply for the joint MBA/LAW program offered by the law and management faculties.

Students who are interested are urged to attend. The meeting will be held in Room 101.

Le français à date

Je me réjouis grandement de voir plusieurs organismes étudiants de notre faculté afficher leur publicité en anglais et en français. Les textes français sont habituellement d'excellente qualité, à une faute près. Mais, amis anglophones, ne vous en faites pas trop, car cette faute est si répandue chez nous, francophones du Québec, que vous l'avez probablement apprise de nous. Qu'on me permette de la souligner: <<mercredi, le 18 février>>. Il s'agit là d'un anglicisme de mauvais aloi et on devrait écrire en français <<le mercredi 18 février>>. Ceci dit, faites ce que vous voulez mais vous ne pourrez dire que personne ne vous l'a dit! Espérant avoir pu être utile.

Gary F. Bell

**Canadian Law Information Council
Conseil canadien de la documentation juridique**

1987 Research Fellowship

Programme

Deadline for Applications
March 31, 1987

Send To:
Catherine Parker, Director of Research
Canadian Law Information Council
5th floor, 161 Laurier Avenue West
Ottawa, Ontario K1P 5J2
(613) 236-9766

Further information available at S.A.O.

Harvey Bell Memorial Prize (For Native Graduates in Law)

This prize has been established by Mrs. Harvey Bell, widow of the late Harvey Bell, Q.C. It provides for an award of \$1,000 to be paid each year, to a student of native Canadian ancestry receiving his or her LL.B. degree in Canada. The prize is in memory of the late Harvey Bell who practiced law in the City of North Battleford, Saskatchewan, for many years. During his lifetime Mr. Bell took a keen interest in native people and their communities. In a variety of ways he sought to assist them.

The student receiving the award is to be selected by a committee of not more than five members made up of representatives from the Native Law Students Association and/or the Canadian Indian Lawyers Association, representatives appointed by Mrs. Bell and the

Cont'd on p.4

LETTERS TO THE EDITOR

Dear Editor,

As first year students, we have recently experienced the mooting process for the first time. This experience, while often exciting and educational, has shown its negative side. In particular, moot problem no. 7 (a sexual assault-murder case) has made us uneasy. This moot problem is an insult to every McGill Law Student and should be of concern to anyone who takes the general goals of this faculty seriously.

The Faculty of Law's stated objectives are twofold: to prepare students for professional life and to promote "the highest standards of learning and scholarship." The approval of this problem by the Moot Court Board suggests that the Faculty has not been entirely successful in promoting either objective.

In the problem sexual assault and death are treated as a dirty joke. In fact, in attempting to be humourous in its choice of character names, the problem affords pop culture credibility to images of violence against women. The accused, who pulls a knife, forcibly fondles and later flings his hemophiliac victim out of a car, is named "John Rambau." This is humour. Very sophisticated humour. The female victim is called "Virginia Slim." The "You've come a long way, baby" slogan which this name evokes is hardly appropriate for a sexual assault victim.

While in the hospital, Virginia Slim is treated by an intern named "Tomas de Torquemada." History buffs will recognize this name from the Spanish Inquisition.

Torquemada was an infamous torturer and executioner. Does the reincarnation of this heinous historical figure serve any useful purpose in this mooting problem? Is there pedagogical value in using the violent and sadistic images of Rambo and Torquemada to represent a restaurant owner and a physician? Finally the characterization of the trial judge as "Honourable Chaud V. Nist" makes a mockery of student efforts to come to terms with concepts of justice. It suggests that the legal decision-making process is to be regarded as a farce, that is, as nothing more than a process of arbitrary discrimination.

It is clear that a more tasteful and less sexist moot problem could have been devised.

Moreover, if membership on the Moot Court Board is determined on the basis of ability, the insensitivity of the problem's drafters make one wonder whether this Faculty is really interested in producing socially responsible practitioners.

Susan Coristine
 Doug Cunningham
 Louis Belzil
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 Robert Chipman
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 Jennifer Dolman
 Kim Fallis
 Theresa Gibbons-Zatore
 Jonathon Colombo
 David Plahs
 Susan Steffen
 Leslie Warren
 Melinda Munro
 Judy Robinson
 Mundy McLaughlin

Julie Quon
 Ned Steinman
 Shelley Flam
 Sally Gomery

Dear Editor,

I am writing in response to a suggestion by Alida Gualtieri ("Spies like us", Letters, *Quid Novi*, 18 February, 1987) that the casebooks sold in the L.S.A. Bookstore contain copyrighted materials reproduced without permission.

The Dean's guidelines for casebook production require casebook editors to obtain permission to reproduce all copyrighted materials. I and the McGill Printing Service operate on the assumption that this is done before any casebook is submitted for printing.

Ken Monteith
 L.S.A. Bookstore

QUID: Notice from Moot Court Board

Given the ongoing saga of Messrs Raphe and Lyon, a special meeting of the Moot Court Board was convened to discuss what appropriate steps were necessary for an equitable solution to these "special students" problems. Given the mishap with regard to these student's factum, the board has agreed to appoint Messrs Barra Cuda (specialist in maritime law) and Hay Seed (specialist in agricultural law) to the bench judging these students. Given their experience, these two

Cont'd on p.6

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Announcements Cont'd from p.2

Director of the University of Saskatchewan Native Law Centre.

The criteria which the committee is to apply in arriving at the decisions is as follows:

- (a) The probable contribution which the individual student might be expected to make, as a lawyer, in establishing the rights of native people in Canada and towards the solution of problems faced by native persons and their communities within the Canadian legal system.
- (b) The student's academic record in his or her law studies.
- (c) In the event that the committee, in considering the above criteria, is unable to reach a decision in judging between two or more eligible students then the committee may give preference to a student who is a Saskatchewan resident.

Students interested in applying for the prize should apply in writing to: The Director, University of Saskatchewan Native Law Centre, 141 Diefenbaker Centre, Saskatoon, Saskatchewan, S7N 0W0.

Students should enclose a resume of their career and education. Letters of application should give information concerning the student's academic record and also should comment on those matters listed in (a). Letters of application should be sent by June 1, 1987.

Law Foundation of Newfoundland

In honour of the 150th Anniversary of the Law Society of Newfoundland (incorporated

1834), the Law Foundation of Newfoundland has established funding for up to four annual law school entrance Scholarships. These Scholarships will be tenable for first year studies at a Canadian law school recognized by the Scholarship Board. The Scholarships will be in the amount of \$2,500.00 payable in two installments.

Applications must be received by May 1st, and the Scholarships will be awarded during the month of June. Awards will be made on the basis of academic ability.

Conditions of Eligibility

A Candidate must:

- (a) be a Newfoundland resident;
- (b) have achieved academic excellence;
- and-
- (c) not be the recipient of any other major Scholarship.

For further information and application form please contact:

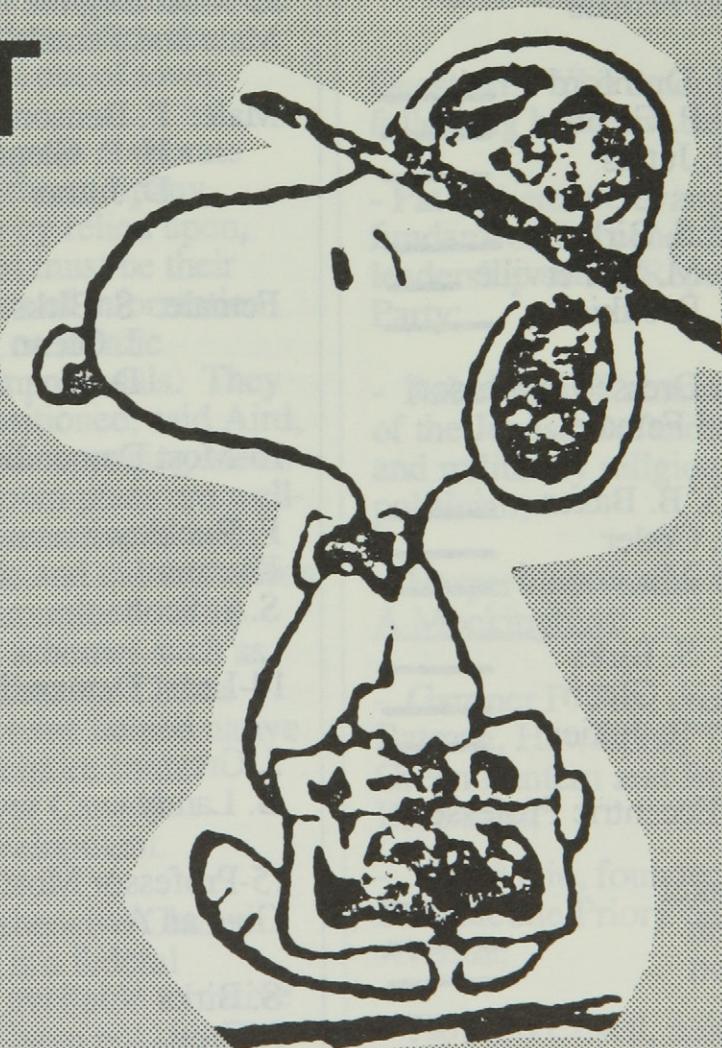
Law Foundation of Newfoundland
P.O. Box 5907
St. John's, Newfoundland
A1C 5X4

Applications must be received by the Law Foundation of Newfoundland no later than May 1st.

IF THERE ARE ALREADY
700,000 ATTORNEYS
IN THIS COUNTRY,
WHY DO WE NEED YOU?



**OFFICIAL
LEGAL
BEAGLE
BALLOT**



And the nominees are...

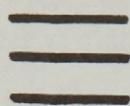
1- Best Overall Professor

P. Benson
F. Buckley
R. Sklar



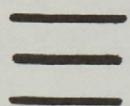
2- Most Outstanding Lecturer

I. Cotler
P. Haanappel
R. Sklar



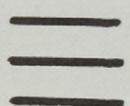
3- Most Respected Professor

I. Cotler
J. Durnford
R. Sklar



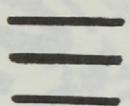
4- Professor with Most Grating Accent

P. Haanappel
E. Groffier-Atala
R. Sklar

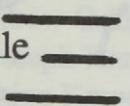


5- Best Dressed Professor;
Male and Female

Male: J. Durnford
H.P. Glenn
D. Jutras



Female: S. Birks
M. Somerville
R. Jukier

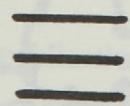


6- Worst Dressed Professor;
Male and Female

Male: G. B. Baker
I. Cotler
R. Macdonald



Female: S. Birks
J. Glenn
R. Jukier



7- Most Eccentric Professor

G. B. Baker
P. Benson
S.A. Scott



8- Professor Most Detached from Reality

G. B. Baker
P. Benson
J. Grey



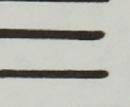
9- Most Predictable Professor

W. Foster
J. Grey
S. Perry



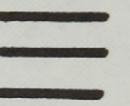
10-Professor Least Likely to Own a Watch

I. Cotler
J. Grey
S. A. Scott



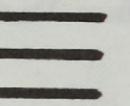
11-Most Caustic Professor

S. Birks
J. E. Brierley
J. Durnford

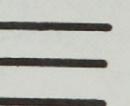


12-Most Eligible Professor;
Male and Female

Male: P. Benson
H. P. Glenn
D. Jutras



Female: S. Birks
J. Glenn
D. Pinard



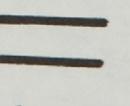
13-Most Demanding Professor

F. Buckley
Kierans
S.A. Scott



14-Least Demanding Professor

J. Grey
B. Landy



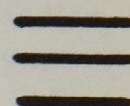
15-Professor Most Likely to Give an A

S. Birks
J. Grey
Doesn't exist



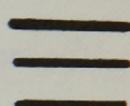
16-Professor Least Likely to Give an A

P.A. Crépeau
Kierans
S.A. Scott



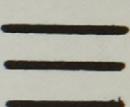
17-Professor Most Likely to Make it to the Supreme Court

I. Cotler
R. Macdonald
J. Durnford



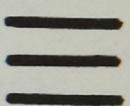
18-Best Course in LLB/BCL Stream

Obs II
Advanced Criminal Intercourse



19-Worst First Year Compulsory Course

Obs
Foundations
Constitutional



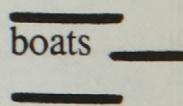
20-Most Desirable Professor to Judge a Moot

S. Birks
R. Macdonald
J. Grey (he won't show)



21-Professor You Would Least Mind Being Stuck on an Island With.

M. Boodman
Tetley - the man knows boats
I'd rather be lonely



22-Most Inspiring Professor (i.e. who most inspired you to investigate other career options.)

I. Cotler
S.A. Scott
F. Buckley



BALLOTS TO BE RETURNED ON OR BEFORE NOON, THURSDAY, MARCH 19

Native Participation in Resource Development

by Terry Pether

There was a good turnout to hear Rebecca Aird speak at the Faculty before slack week on "Native Participation in Canadian Resource Development." A guest of Lawyers for Social Responsibility, Aird is a freelance researcher and consultant on environmental and native issues. She is currently working with the Big Trout Lake Band in Northern Ontario as that group contemplates its role in any potential exploitation of plutonium deposits beneath its land.

Many groups of native people across Canada are seeking control of the processes by which externally-motivated resource development projects in the areas of mining, oil and gas and hydroelectricity are launched in remote regions which Indians inhabit. On the one hand, said Aird, they aspire to their own economic destinies while, on the other hand, they attempt to minimize social and environmental disruptions that attend resource development. Indeed, big companies involved favour high-tech exploitation which is often at odds with native priorities. A recent example of this concerned the granting of timber leases over portions of the Queen Charlotte Islands which the Haida Indians objected to for the environmental impact lumbering would have on their traditional way of life. Unfortunately, even where self-government is espoused, it is limited conceptually to some sort of municipal government with no jurisdiction over the

plans of external resource developers who will continue to deal with the provinces.

"Resources are not," said Aird, "they become." In other words, resource development is not simply a matter of techo-extraction, but is also a cultural activity which affects all aspects of life in the native community involved. To avoid falling prey to the boom or bust syndrome endemic to single resource development projects, native bands want sufficient managerial level input into the planning of infrastructure and spinoff industries for the shorter term as well as for a mixed economy in the longer term. After all, they will be the victims when downturns in the relevant markets force the parent project out of town.

Because the good corporate character of the company cannot often be relied upon, native groups must be their own gatherers of information surrounding economic development proposals. They are better positioned, said Aird, to submit their opposing views where their own plans are well-studied and sensitive to both the economic and cultural needs of their communities. Still, government schemes such as the Comprehensive Claims Programme have helped native peoples to acquire some influence over Canadian resource development.

The Comprehensive Claims Programme is a federal programme available to native groups who have not signed away their land rights in treaties. It provides for a process of negotiation of land

claims. Although this programme has resulted in only one signed settlement, Aird believes that such claims settlements, as well as self-government, are important preliminary steps towards greater influence. In the meantime, other schemes for native participation have helped in this regard. They include cash settlements which give bands capital for investment in joint ventures, federal offers to bands of shares in resource royalties that encourage development, and appointments to regulatory bodies and advisory boards in areas of

Cont'd on p.6

GUESS WHO!

Question: Who among the following have law degrees...

- Pat Robertson, evangelist and fundamentalist candidate for the leadership of the Republican Party;
- Rabbi Meir Kahane, founder of the Jewish Defence League and militantly religious Israeli politician;
- Harper Lee, author of To Kill A Mockingbird;
- Gardner F. Fox, creator of Batman, Hawkman, The Flash, Green Lantern and Brak the Barbarian;
- John Main, founder of the Benedictine Priory on Pine Avenue;
- Howard Cosell, colour commentator, author and big mouth?

ANSWER ON P.8

Charter Cont'd from p.1

appeal, because oral hearings currently occupy one quarter of the Court's sitting time, LaForest, obviously in favour of the idea, declared, "it's ridiculous! We can read you know!" On the importance of oral advocacy at the pleading stages, he had this to say: "Good lawyers don't need more than one hour." Still, LaForest finds advocacy useful because the lawyer often has the right path to lead everybody out of the legal jungle, including his client. On adding more judges to the Supreme Court's bench, LaForest felt this would be too much of an impediment to consensus. And he does not support the suggestion of creating different branches for different issues or offences, although he did accept the idea of an intermediate criminal court of appeal. Otherwise, said Mr. Justice LaForest, the symbolism of a single supreme court is just too important. The real problem is to limit the number of cases reaching the Supreme Court in the first place.

Mr. Justice LaForest states that the Charter has brought new challenges to the Court and that he and his fellow justices are up to them. This was evidenced by his thoughtful comments and answers to students, students who perhaps some day may have the opportunity to present new Charter issues before Mr. Justice LaForest and the Supreme Court of Canada.

Moot Problem Cont'd from p.1

posted a letter on February 16 inviting concerned students to meet with him. The Moot Court Board was represented at the meeting. Not without

dissent, the L.S.A. voted to adopt both resolutions.

At Faculty Council's meeting of February 19, L.S.A. President Maria Battaglia asked Dean MacDonald for his thoughts on the resolution calling for a joint student/faculty committee. Pointing out that "Problem no. 7" was not an isolated incident, but that it was rather symptomatic of others within the Faculty involving not only moot problems but tutorial assignments and exam questions as well. Dean Macdonald agreed to accept volunteers for a committee.

In the meantime, the Dean has discussed "problem no. 7" with the Moot Court Board in order that the unsatisfactory state of affairs can be rectified. Although Mooting problems are usually flippant, it became unacceptable in this case, said the Dean, where form clashed with substance.

Any committee that is formed will not be mandated to suggest guidelines. Instead, Dean Macdonald hopes that the committee will be able to sensitize faculty and students to our unconscious biases. After all, he noted, brazen lapses into poor taste are readily censured by existing institutional and moral constraints. It's the more superficially undetectable prejudices which can be especially harmful. Lessons have already been learned from Moot Court Problem No. 7.

Letters to the Editor Cont'd from p.3

judges will easily accommodate the "fishy and crappy" arguments of Messrs Raphe and Lyon. To allay any of Mr. Don Key's focus, his brother Mon (a student here at the faculty) has also been assigned to the

bench to ensure that there is no monkeying about during the pleadings.

The Moot Court Board

P.S.: While the law may be an ass, the board does its best to wipe away any problems that may be hanging about. After all, we still aim to please!!

Native Participation Cont'd from p.5

wildlife management, environmental protection and resource development, especially important, said Aird, when, as now, resource-based industries slow down and environmental issues become a greater priority.

Still, the tension between economic goals and environmental concerns always exists. Outside companies can always threaten to withdraw their attractive promises of jobs. And they do. This pressure, argued Aird, leaves native groups with less time and leeway to carefully reflect upon where to go environmentally and socially. Furthermore, it is difficult for that small group, from any band, that leads the debate to educate its people about the complex issues involved and to thereby adhere to the native preference for participatory rather than representative democracy. Far from their constituencies, at the bargaining table, the leadership is, as Aird pointed out, often forced, because the provinces (who control resources) favour mediated settlements between bands and industry, to accept trade-offs for immediate gains at indeterminate future cost.

Being in an unfair bargaining position is the unhappy reality

Cont'd on p.8

A Typical Monday Morning

by Desi Meccia
B.C.L. I

B R R O O O N G !!!

"7:00, News time on C.L.A.W. Radio."

"Early George here with the news on this cold minus 19 degree morning..."

Oh, no!! Shut up!! Let me sleep,
pleeeasse!!!#\$/*&\$'%(")&%
!!!

"It's time to get up boys and girls, it's now 7:11 and time to shovel those unexpected 15 centimetres of snow."

What!! You're joking!!!?

All right legs, get up from that bed before I'll really be late.

Shower? Can't. I have Prof. Levinson this morning. Don't have time to shower, 8:30 class.

"Come on, Mike, hurry, get out of that bathroom!!!"

Wash. Comb and brush. Make-up. Dress.

Noopp! Shirt don't match; dress again.

No way! I'll be too hot; dress again.

Nah! I'll be cold in that minus 20 degree library; dress again.

What the heck, I'll wear these rags; don't have time.

"What Ma? Eat? Don't have time."

";What, Ma? I said I don't have time."

"Yes, Ma. I will buy a good

breakfast at school."

"No, Ma. I didn't forget my lunch. Bye!!" (kiss, kiss)

7:45: RUN, RUN, RUN. W H O O O S S H H !!!

"Wait, wait!!"

There goes my bus.

7:55: Bus finally here.

"Excuse me, excuse me. Sorry Miss, sorry Sir."

"Hè!! Faites attention!! Ton sac!"

I know my bag is too big but what can I do? 'Bring your Civil Code,' they say, 'bring your Criminal Code. Bring your casebook.'

8:10: Was that bus ever crowded! Now, let me try out that metro.

"Excuse me, excuse me, sorry ma'am, sorry sir. Heh, heh, big bag."

"ATTENTION à tous les passagers, attention all passengers.
Due to electrical difficulties, there will be a delay of 5 to 10 minutes."

I'm late for sure now. I might as well continue reading Hogg.

8:20: Metro still not working.

"Attention all passengers....delay of 5 to 10 minutes."

8:30: Metro still not working.

"Attention all passengers....delay of 5 to 10 minutes."

8:50: Finally!! Metro's here!

9:05: PEEL! Fresh air once more (if you can call it that).

Ah, whew, ah, whew, ah, whew, ... up, up, up the darn mountain.

Come on legs, you can do it. Lift those feet!! Drag those books!! Up, up, up. Ah, hello Dr. Penfield. Please traffic light, turn red; I need an excuse to rest.

Hello, faculty. I'm only 40 minutes late today.

Hey!!! Where's everybody??!

B R O O O N G !!! "7:00, News time at C.L.A.W. Radio."

..
WHAT!! A DREAM! DO YOU MEAN I HAVE TO GO THROUGH ALL THIS AGAIN??!!

"Early George here with the news on this cold minus 19 degree morning..."

W H A A M !! C R A A S H !!

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Native Participation Cont'd from p.6

for Indian bands who play a role in their own destinies. But as many native groups pursue their plans for economic prosperity, Aird believes that the tide is moving in the proper direction, however slowly, towards a satisfactory working relationship between peoples with special heritages and homelands to preserve and the bigger players who can let them do so while sharing in the benefits of Canadian resource development.

Answer: All of them?

Quote of the Week

Remedies with Professor Bridge:

"The plaintiff's wife seems to have been totally impervious to an understanding of the expectation principle."



"Your mother went jogging and got a ticket for 'malicious damage' to the sidewalk."

Speaker's Corner

Forum National Presents

BOB RAE

Leader of the Ontario NDP

Thursday, March 12

AT 1:00 p.m. in the

MOOT COURT

According to the Globe, the suit seeks reform in the treatment of Salvadoreans by the INS, in particular by demanding that Salvadoreans be notified of their right to seek asylum in the U.S., and be provided with access to lawyers. However the trial has broadened into an examination of political conditions in El Salvador since the government's defence to the action is that economic rather than political conditions are the cause of emigration from El Salvador. Thus political conditions in El Salvador, and the involvement of the U.S. government in perpetuating rather than ameliorating these conditions, has become central to the trial. At one point in the trial the judge remarked to one of the Government's witnesses that "the United States Government itself has allowed and contributed to their (the Salvadorean refugees) plight by not taking the steps that it could if it wanted.

On Wednesday March 11 at noon, at the request of the ILS, Lisbeth Vandenbosch (LLB II) will speak on her experience last summer working for the National Center for Immigrants Rights in preparing the style of trial in the case. Everyone is welcome to come hear Lisbeth's talk.

